STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,	)	
	)	
Charging Party,	)	Case No. LA-PN-51-H
	)	
v.	)	PERB Decision No. 477-H
	)	
CALIFORNIA STATE UNIVERSITY,	)	December 31, 1984
	)	
Respondent.	)	
	)	

Appearance: Howard O. Watts on his own behalf.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (Board) on an appeal by Howard O. Watts (Complainant) of the Board agent's dismissal, attached hereto, of his public notice complaint alleging that the California State University violated section 3595(a) and (b) of the Higher Education Employer-Employee Relations Act (Government Code section 3560 et seq.).

We have reviewed the Board agent's dismissal in light of the Complainant's appeal and the entire record in this matter and adopt that dismissal as the Decision of the Board itself.

ORDER

The public notice complaint in Case No. LA-PN-51-H is DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Jaeger joined in this Decision.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088

February 3, 1984

Howard Watts
1021 N. Mariposa Avenue # 3 1/2
Los Angeles, CA 90029

Thomas A. Lambre, Assistant Vice Chancellor
Employee Relations
California State University System
400 Golden Shore
Long Beach, CA 90802

Re: Dismissal of Public Notice Complaint H. Watts v. California State University System, Complaint No. LA-PN-51-H

Dear Parties:

I indicated to Mr. Watts in my warning letter dated November 25, 1983, (attached) that the above-referenced complaint did not state a prima facie case and that unless he amended the complaint to state a prima facie case or withdraw it prior to December 15, 1983, it would be dismissed. After two extensions of time, Mr. Watts filed his first amended complaint on January 5, 1984, including additional allegations. Also, my investigation has uncovered more information. After carefully reviewing the amended complaint, the new information and the material previously presented, the above-referenced complaint as amended still fails to state a prima facie case. Therefore, the amended complaint is being dismissed without leave to amend based on the facts and reasons stated below.

I.

The amended complaint provided no additional facts, but rather provides only additional legal arguments. The amended complaint alleges that the California State University System (CSUS) committed numerous violations of Government Code sections 3595(a) and (b), among others. More specifically, the amended complaint argues that: (1) The CSUS Board of Trustees illegally delegated its control to the "subterfuge" Committee on Collective Bargaining; (2) CSUS procedures do not "allow for the representative to avoid the presentation at a public meeting of the 'subterfuge' Committee on Collective Bargaining or the Board of Trustees;" (3) CSUS procedures are in violation

of Government Code section 3595(a); (4) Government Code section 3562(h) "is not tied to 3595(a-e) at all;" (5) Applicability of Government Code section 11122 does not allow Mr. Lambre to "tak[e] action by himself" in deciding not to hold the UAPD proposals in abeyance; (6) "Whether the CSUS held a public response" meeting on the various proposals in Fresno, California on March 2, 1983; (7) Government Code section 3595(b) was violated because "there was no opportunity for the public to express itself at the meeting on March 2, 1983;" (8) UAPD proposals should not have been presented on March 2, 1983, "because Mr. Watts did not receive his letter denying the proposals be put into abeyance until March 3, 1983;" and (9) The applicable laws create a "conflicting and complex situation".

My investigation revealed the following: the initial response meeting for the exclusive representatives and higher education employer was held in Long Beach, California on February 23, 1983, for UAPD - Unit 1, Physicians; California State Employees' Association for Unit 2, Health Care Support; Unit 5, Operations Support; Unit 7, Clerical/Administrative Support; Unit 9, Technical Support Services; and State Employee Trades Council for Unit 6, Skilled Crafts. In the original public notice complaint filed by Mr. Watts in LA-PN-52-H, a complaint based on the same meetings as in LA-PN-51-H, the complaint alleged that 50 copies of the UAPD proposal were available to the public at the public meeting held February 23, 1983.

Mr. Watts requested at the February 23 meeting that the UAPD proposal be held in abeyance. In a letter received by Mr. Watts on March 3, 1983, his abeyance request was denied by Mr. Lambre, Assistant Vice Chancellor for Employee Relations at CSUS.

On March 2, 1983, in Fresno, California, a public meeting was held for the purpose of presenting the bargaining proposals from the Statewide University Police Association for Unit 8, Public Safety and for the public to respond to the proposals by State Employee Trades Council, the California State Employees' Association, and UAPD.

II.

For the following reasons, none of the allegations in the amended complaint state a prima facie case.

Allegations 1. & 4. Government Code sections 3562(h) and 3595(a-e) are all part of the Higher Education Employer-Employee Relations Act (HEERA), a comprehensive statuory plan to "provide orderly and clearly defined procedures for meeting and conferring and the resolution of impasses, and to define and prohibit certain practices which are inimical to the public interest." (Government Code section 3561). HEERA became operative on July 1, 1979.

The CSUS Board of Trustees or its designated committee may conduct meetings for the CSUS Board of Trustees, the Higher Education Employer, as provided in Government Code section 3562(h):

> "Employer" or "higher education employer" means the. . .trustees in the case of the California State University and Colleges, including any person acting as an agent of an employer.

Section 89035 of the Education Code provides:

> Wherever in this code a power is vested in the Trustees, the Trustees by majority vote may adopt a rule delegating such power to any officer, employee or committee as the Trustees may designate.

In connection with the adoption of HEERA, the CSUS Board of Trustees established a special Committee on Collective Bargaining.[1] Since then, the Committee on Collective

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[1]Pursuant to the express legislative grant of the authority to delegate, contained in Education Code section 89035, the Board of Trustees established its Committee on Collective Bargaining. Subsection 5(h) of Article VI of that Board's Rules of Procedure provides as follows:

> (h). Committee on Collective Bargaining.
>
> <u>The Committee on Collective Bargaining shall have delegated authority to act for the Board of Trustees in order to comply with the requirements of the Higher Education</u>

Bargaining has been maintained as a regular standing committee of the Board of Trustees. The statutory scheme outlined above appears plainly to permit CSUC to delegate to its Committee on collective bargaining authority to act in the realm of collective bargaining including sunshining of collective bargaining proposals. Accordingly, allegations 1 and 4 are dismissed.

Allegation 2. HEERA does not require the exclusive representative to make in-person presentations of the collective bargaining proposals. (See November 25, 1983 letter, sections II.1.) Furthermore, the CSUS Board of Trustees in Title 5, Article 16.1 - Public Notice of Initial Proposals of Exclusive Representatives and California State University, procedure section 43725(b), provide the following:

> (b) At the first meeting called for a particular representation unit, the exclusive representative shall present its proposal in writing and shall have ten (10) copies of such proposal for members of the Board of Trustees or its designated committee present, twenty (20) additional copies for distribution to the main library at each campus and in the Office of the Chancellor, and a sufficient quantity, but not fewer than twenty (20), for interested members of the public in attendance at the public meeting. At the time of such presentation, a representative of the exclusive representative may address the Board of Trustees or its designated committee for the purpose of clarifying or

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> Employer-Employee Relations Act (HEERA) and implement the collective bargaining policy of the Board of Trustees. The delegation to the Committee on Collective Bargaining includes, but is not limited to, authority to negotiate memoranda of understanding pursuant to the policies of the Board of Trustees. The Committee on Collective Bargaining shall submit periodic progress reports to the Board of Trustees on matters pertaining to collective bargaining and actions which it has taken. (Emphasis added.)

> amplifying upon any portion of its proposal. Thereafter, the Board of Trustees or its designated committee shall set a time for a second public hearing.

Thus, the exclusive representative may choose not to address the Board of Trustees or its designated committee if the representative deems the written proposal sufficient. The procedure does not make it mandatory that the exclusive representative appear in person before the Board of Trustees or its designated committee when offering the proposal. Based on the foregoing, allegation number 2 is dismissed.

Allegation 3. The CSUS Board of Trustees in Title 5, Article 16.1 - Public Notice of Initial Proposals of Exclusive Representatives and California State University, procedure section 43725(a) provides the following:

> (a) An initial meeting to present the proposal of an exclusive representative for a particular unit shall be scheduled within a reasonable time by the Board of Trustees or its designated committee.

This procedure, Mr. Watts asserts, is in violation of HEERA section 3595(a).

Section 3595(a) states:

> (a) All initial proposals of exclusive representatives and of higher education employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the higher education employer and thereafter shall be public records.

It is clear that procedure section 43725(a) and Government Code section 3595(a) are compatible. Both sections require presentation of initial proposals of the exclusive representatives at a public meeting of the higher education employer. See number 1 for discussion on higher education employer.

The Webster's New Collegiate Dictionary definition of the verb "present" is "to bring before the public. . .to offer to

view." Nothing in the definition or the relevant sections or statutes requires that the offering be made in person in order to constitute a "presentation". The public notice provisions of HEERA were enacted to ensure that the public has an opportunity to be informed about the substance of initial collective bargaining proposals submitted by HEERA employer and employee organizations. The documents submitted by UAPD were the best evidence of the proposal UAPD wished to make. UAPD's decision not to orally reiterate the contents of its documents cannot reasonably be considered violative of either CSUS's regulation or the applicable Government Code section.

Allegations 5. & 8. PERB does not have jurisdiction to correct all possible unfairness directed towards members of the public. Instead, PERB is authorized to enforce and protect certain rights granted to the public under HEERA. Specifically, Government Code section 3595 provides:

> (a) All initial proposals of exclusive representatives and of higher education employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the higher education employer and thereafter shall be public records.
>
> (b) Meeting and conferring shall not commence on an initial proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the higher education employer.
>
> (c) After the public has had the opportunity to express itself, the higher education employer shall, at a meeting which is open to the public, adopt a proposal, including any changes to its initial proposal which the higher education employer deems appropriate based on the public's comments.

> (d) New subjects of meeting and conferring arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the higher education employer, the vote thereon by each member voting shall also be made public within 24 hours.
>
> (e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being met and conferred upon and have full opportunity to express their views on the issues to the higher education employer, and to know of the positions of the higher education employer.

Mr. Watts attempts to rely upon the "Open Meeting Act" (Government Code sections 11120-11131) to demonstrate that Mr. Lambre's "action" in denying Watts' request to hold the UAPD proposal in abeyance was a violation of Government Code section 11122. The lawfulness under the "Open Meeting Act", of CSUS's delegation to Mr. Lambre is not a question for PERB to decide nor is it necessary to make that determination; PERB is not authorized to adjudicate violations of Government Code section 11122. In any event, the "Open Meeting Act" does not appear to have been intended to address the question of whether a committee, rather than its agent, must decide to hold a matter in abeyance.

Mr. Watts appears to argue that Mr. Lambre's denial of his request to hold the UAPD proposal in abeyance also violated HEERA section 3595. But Mr. Watts knew, or should have known, of the scheduled March 2, 1983, public response meeting. By his own admission, he attended the February 23 initial proposal meeting and the notes of that meeting indicate that a public response meeting was scheduled for March 2, 1983. Additionally, the public in general (including Mr. Watts) were informed that if they could not attend the March 2 meeting in Fresno, they could make their comments in writing. This afforded ample opportunity for public response to the proposal.

Allegations 6. & 7. Mr. Watts questions "whether the CSUS held a public response to the initial proposals presented at the February 23, 1983," meeting. However, the answer is readily available from a review of his original complaint. Exhibit 4 (Agenda for March 2, 1983, meeting in Fresno, California, which includes a provision for public comment on bargaining proposals submitted February 23, 1983) and Exhibit 5 (Notes of the March 2, 1983, public meeting held in Fresno, California) attached to the original complaint show that a public response meeting was held on March 2, 1983, in Fresno. His allegation that the March 2 meeting may not have been held is wholly speculative and, therefore, cannot sustain a complaint.

Mr. Watts asserts that if the meeting were held in Fresno, "it wasn't a reasonable time or place to hold such a meeting." The meeting was called to order at 10:00 a.m. Mr. Watts fails to assert any facts to show that this is not a reasonable time.

Additionally, CSUS has campuses throughout California, including Fresno, and it appears equitable to conduct meetings at a variety of locations. Nothing in HEERA requires the public response meeting to be conducted on the same campus where the initial employer response meeting is held.

HEERA section 3595(b) states:

> (b) Meeting and conferring shall not commence on an initial proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the higher education employer.

Mr. Watts contends that this statute was violated because "there was no opportunity for the public to express itself at the meeting on March 2, 1983." This allegation is not supported by the facts. As shown above, Mr. Watts was aware of the March 2 meeting in Fresno. One of the main reasons for the meeting was to receive public comment on the initial proposals. Mr. Lambre stated on February 23, 1983, "that the public meeting to hear community's comments on the exclusive representative's proposals will be held on March 2, 1983, California State University, Fresno, Joyal Administration Building, Room 203, at 10:00 a.m." He added that the Board of

Trustees has stated that the public's comments are urged and could also be made in writing. (Notes of Public Meeting - February 23, 1983). Consequently, even if Mr. Watts could not attend the March 2, 1983, public response meeting, he had the opportunity to express his comments on the initial proposals in writing. Hence, these allegations, also, lack merit.

Allegation 9. In interpreting the public notice provisions of HEERA, effort must be made to "harmonize" those provisions with other potentially conflicting Education Code provisions. See San Mateo City Schools v. PERB (1983) 33 Cal.3d 850, 864-865, adopting PERB's approach in Healdsburg Union High School District (6/19/80) PERB Decision No. 132. Nothing in the amended complaint, however, suggests that harmonization principles would be disserved by dismissal of the complaint.

Pursuant to Public Employment Relations Board regulation section 32925 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the complaint by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (section 32925). To be timely filed, the appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on February 23, 1984, or sent by telegraph or certified United States mail postmarked not later than February 23, 1984(section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of this dismissal any other party may file with the Board itself a statement in opposition within twenty (20) calendar days following the date of service of the appeal.

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 32140 for the required contents and a

sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By Carl Bessent
Carl Bessent
Staff Attorney

CB:mlb

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350

November 25, 1983

Mr. Howard O. Watts
1021 North Mariposa Avenue, Apt. 3 1/2
Los Angeles, CA 90029

Re: LA-PN-51-H

Dear Mr. Watts:

The purpose of this letter is to: 1) analyze your complaint (LA-PN-51-H); 2) explain why, as presently written, the complaint does not state a prima facie case; and 3) to provide you an opportunity to amend your charge.

Your above referenced Public Notice Complaint alleges that the California State University System (CSUS), higher education employer, has committed four violations including the violation of Government Code section 3595(a).

I.

The complaint alleges the following: (1) CSUS violated Government Code section 3595(a) by failing to require an in-person presentation of initial proposals by the Union of American Physicians and Dentists (UAPD), Unit 1, at the February 23, 1983 public meeting; (2) there was no public response meeting in Southern California; (3) proper notice was not made for the March 2, 1983 meeting because the meeting was held by the "Committee on Collective Bargaining" instead of the Board of Trustees; (4) meeting of the Committee on Collective Bargaining is not a meeting of the higher education employer because it is composed of staff rather than the full Board of Trustees.

My investigation revealed that the initial response meeting for the exclusive representatives and employer was held in Long Beach, California on February 23, 1983 for UAPD - Unit 1, Physicians; California State Employees' Association for Unit 2, Health Care Support; Unit 5 Operations Support; Unit 7 Clerical/Administrative Support; and Unit 9, Technical Support Services; and State Employees Trades Council for Unit 6, Skilled Crafts. Your Complaint, LA-PN-52-H, shows that 50 copies of the UAPD proposal were available to the public at the public meeting held February 23, 1983. Neither Complaint,

LA-PN-51-H nor LA-PN-52-H, alleges that the UAPD proposal was not sufficient for the public to know the issues being proposed. (See Palo Alto Unified School District (12/2/81) PERB Decision No. 184.)

II.

For the following reasons, the complaint, as presently framed, does not state a prima facie case.

1. Section 3595(a) states that:

> (a) All initial proposals of exclusive representatives and of higher education employers, which relate to matters within the scope of the representation, shall be presented at a public meeting of the higher education employer and thereafter shall be public records.

The Webster's New Collegiate Dictionary definition of the verb "present" is "to bring before the public. . .to offer to view." Nothing in the definition or the statute requires that the offering be made in person to constitute a "presentation" and logic dictates otherwise. The public notice provisions of HEERA were enacted to ensure that the public has an opportunity to be informed about the substance of collective bargaining propoals submitted by HEERA employers and employee organizations. The documents submitted by UAPD were the best evidence of the proposal UAPD wished to make. UAPD's failure to orally reiterate the contents of its documents cannot reasonably be considered violative of the statute.

2. As you admit in your complaint, CSUS did schedule and have a public response meeting on March 2, 1983 in Fresno, California. Nothing in HEERA requires the public response meeting to be conducted on the same campus where the initial employer response meeting is conducted. Further, CSUS has campuses throughout California and it appears equitable to conduct meetings in a variety of locations. The complainant cites PERB Decision No. 158 as support. That decision, however, involves the District's responsibility to provide proper public notice and to present all initial proposals; it is irrelevant to the instant charge, which concerns where the public response meeting is held.

3. & 4. The Board of Trustees or its designated committee may

conduct the meetings for the higher education employer as provided in Government Code section 3562(h).

> "Employer" or "higher education employer" means the. . .trustees in the case of the California State University and Colleges, including any person acting as an agent of an employer.

Section 89035 of the Education Code provides:

> Wherever in this code a power is vested in the Trustees, the Trustees by majority vote may adopt a rule delegating such power to any officer, employee or committee as the Trustees may designate.

In connection with the adoption of HEERA, the CSUS Board of Trustees established a special committee on collective bargaining.[1] Since that time, the Committee on Collective Bargaining has been maintained as a regular standing committee

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[1] Pursuant to the express legislative grant of the authority to delegate, contained in Education Code section 89035, the Board of Trustees established its Committee on Collective Bargaining. Subsection 5(h) of Article VI of that Board's Rules of Procedure provides as follows:

> (h). Committee on Collective Bargaining.
>
> The Committee on Collective Bargaining shall have delegated authority to act for the Board of Trustees in order to comply with the requirements of the Higher Education Employer-Employee Relations Act (HEERA) and implement the collective bargaining policy of the Board of Trustees. The delegation to the Committee on Collective Bargaining includes, but is not limited to, authority to negotiate memoranda of understanding pursuant to the policies of the Board of Trustees. The Committee on Collective Bargaining shall submit periodic progress reports to the Board of Trustees on matters pertaining to collective bargaining and actions which it has taken. (Emphasis added).

of the Board of Trustees. In light of Education Code section 89035, the Board of Trustees' delegation of authority does not appear to violate the public notice provision of HEERA.[2] Thus, proper public notice was provided for the March 2, 1983 public response meeting held by the Board of Trustees' designated committee.

For the aforementioned reasons, your complaint, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the public notice complaint accordingly. The amended complaint should be prepared on a standard PERB public notice complaint form clearly labeled First Amended Complaint, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the complainant.

If I do not receive an amended complaint or withdrawal from you within 20 days of service of this letter, your complaint will be dismissed. If you have any questions on how to proceed, please call me at (916) 322-1320.

Sincerely yours,

Carl J. Bessent

Carl J. Bessent
Graduate Legal Assistant

CJB:mlb

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[2] In interpreting the public notice provisions of HEERA, efforts should be made to "harmonize" those provisions with other potentially conflicting Education Code provisions. See San Mateo City Schools vs. PERB (1983) 33 Cal. 3d 850, 864-865, adopting PERB's approach in Healdsburg Union High School District (6/19/80) PERB Decision No. 132.